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Attorneys for Plaintiffs  
JOHN NEVADO and ROBERT MEISSNER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOHN NEVADO, an individual; and  
ROBERT MEISSNER, an individual;

Plaintiffs,

v.

OFFICE DEPOT, LLC, a Florida  
corporation

Defendant.

Case No.

**PLAINTIFFS JOHN NEVADO AND  
ROBERT MEISSNER COMPLAINT  
FOR:**

- 1. BREACH OF CONTRACT**
- 2. SERVICES RENDERED**
- 3. INTENTIONAL  
MISREPRESENTATION**
- 4. UNJUST ENRICHMENT**

**DEMAND FOR JURY TRIAL**

28 USC § 1332(a)

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1 Plaintiffs John Nevado and Robert Meissner (collectively, "Plaintiffs") bring  
 2 this Complaint against Defendant Office Depot, Inc. ("Office Depot" or  
 3 "Defendant"), and DOES 1 through 50, in support, on information and belief, allege  
 4 as follows:

### 5 **THE PARTIES**

6 1. At all relevant times, John Nevado resided in the state of New York.  
 7 2. At all relevant times, Robert Meissner resided in the state of California.  
 8 3. Upon information and belief, at all relevant times, Office Depot was a  
 9 company duly organized and existing under and by virtue of the laws of the state of  
 10 Delaware, with its principal place of business in Boca Raton, Florida, and maintains  
 11 over seventy retail stores across the state of California.

12 4. Plaintiffs are unaware of the true names and capacities, whether  
 13 individual, corporate, agent, representative, or otherwise, of Defendants named as  
 14 DOES 1-50 and therefore sues those defendants by such fictitious names. Plaintiffs  
 15 are informed and believes, and thereon alleges, that each of the Defendant DOES is  
 16 in some manner responsible for the acts and occurrences alleged herein; and that  
 17 each DOE Defendant is therefore liable to Plaintiffs as alleged herein. Plaintiffs will  
 18 seek leave of Court to amend this Complaint to set forth the true names and  
 19 capacities of these fictitiously named Defendants when they are ascertained.

### 20 **JURISDICTION**

21 5. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §  
 22 1332(a) because Plaintiffs are citizens of New York and California, and Defendant  
 23 is a citizen of Florida where it has its principal place of business; and the aggregate  
 24 amount in controversy is believed to exceed \$75,000.

25 6. This Court has personal jurisdiction over Defendant because of  
 26 Defendant's purposeful conduct within the District. As alleged below, a large part of  
 27 the contract that Defendant entered and breached was to be performed in Los  
 28

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1 Angeles. As is alleged below, the relationship that Plaintiffs facilitated was between  
2 Office Depot and BYD Co Ltd. (“BYD”) which distributed the supplies Plaintiffs  
3 sourced through its wholly owned subsidiary located in Los Angeles, California. On  
4 information and belief, Office Depot received the supplies sourced by Plaintiffs  
5 through the shipping port also located in Los Angeles County, California. Plaintiff  
6 Meissner entered the subject contract from within the District. These facts combined  
7 with Defendant’s substantial retail presence within the District constitute purposeful  
8 contacts such that the exercise of personal jurisdiction is fair and reasonable.

9 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because,  
10 a substantial part of the events giving rise to the claims asserted herein occurred or  
11 were to occur in this District.

### **FACTUAL ALLEGATIONS**

12  
13 8. Plaintiffs and Defendant entered an agreement wherein Plaintiffs would  
14 facilitate and consult regarding the supply of Personal Protective Equipment  
15 (“PPE”) during the height of the COVID-19 pandemic.

16 9. Defendant breached this agreement with Plaintiffs by failing to  
17 compensate Plaintiffs their agreed upon consultancy fees for sourcing and  
18 facilitating the delivery of PPE, after Plaintiffs had already significantly performed  
19 at the request and to the benefit of Defendant.

20 10. In or around March 2020, when the World Health Organization (WHO)  
21 declared COVID-19 a global emergency due to the coronavirus outbreak, the United  
22 States was experiencing a significant shortage in PPE.

23 11. In April 2020, Plaintiffs and Office Depot had numerous discussions  
24 related to Plaintiffs’ facilitation and consultation for the supply of PPE to Office  
25 Depot based on Plaintiffs particular experience and connections. These discussions  
26 included many discussions directly with Defendant CEO Gerry Smith.  
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1           12. At the request of Defendant and on reliance that the parties were  
2 operating in good faith to come to terms of an agreement, Plaintiffs sent to Office  
3 Depot extensive information regarding the types of PPE required, pricing, preferred  
4 methods of shipment, quantities required by Defendant, and photos and registration  
5 information of the masks. Additionally, Plaintiffs made it clear repeatedly that there  
6 would be a fee for the services that Plaintiffs were providing that was separate from  
7 the pricing of the masks.

8           13. Office Depot's initial request was that Plaintiffs help it  
9 source approximately 200 million 3 ply face masks and 15 million N95 respirators  
10 to be delivered in May 2020. Followed by 500 million 3 ply face masks and 100  
11 million N95 respirators in June 2020, with additional orders to follow.

12           14. On or about April 10, 2020, Plaintiffs returned several documents  
13 requested by Office Depot, including a Trade Vendor Purchasing Agreement  
14 ("TVA"), EDI Form, and W-9 form.

15           15. On April 11, 2020, Office Depot informed Plaintiffs that it had "small  
16 changes" to the forms Plaintiffs have submitted. In addition to the non-material  
17 changes, Office Depot requested more information from Plaintiffs in a separate  
18 document. However, Office Depot, including through its CEO Gerry Smith and  
19 other top executives, insisted that because of the importance of securing PPE as  
20 soon as possible, Plaintiffs would need to work on Office Depot's behalf based on  
21 the parties' verbal agreements and, at the same time, Office Depot would reduce the  
22 agreements to writing.

23           16. On or about April 11, 2020, Office Depot requested that Plaintiffs  
24 provide a legal entity that could sign on as a "trade vendor" with Office Depot  
25 through the TVA instead of an individual so that it could avoid importing and  
26 customs complications and could deal with a US based company. Plaintiffs did so.  
27  
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1           17. Plaintiffs and Office Depot agreed and began to operate with the legal  
2 entity registered with Office Depot by Plaintiffs serving as the vendor that Office  
3 Depot would source and import PPE through. Plaintiffs facilitated this transaction  
4 for an agreed upon fee. Plaintiffs continued to source and provide logistics for  
5 Office Depot's sourcing and importing of PPE.

6           18. On April 23, 2020, Office Depot requested that Plaintiffs present it with  
7 a vendor/solution for PPE with financing options to pay a U.S. based company,  
8 shipping solutions, payments terms, and a large supply for N95s and 3 ply masks.

9           19. As instructed, Plaintiffs delivered on Office Depot's mandate by  
10 finding a solution in BYD Co Ltd. ("BYD"), one of the largest companies in China,  
11 that could perform to the specifications Office Depot had expressed on the call.

12           20. BYD distributed its PPE products in the US through its wholly owned  
13 subsidiary, Global Healthcare Product Solutions LLC, located at 1800 S Figueroa  
14 Street, Los Angeles, California 90015.

15           21. On or about April 24, 2020, Nevado returned Office Depot's  
16 administrative agreements (TVA and Vendor EDI Request Form) to Office Depot  
17 that were executed by the trade vendor registered by Plaintiffs.

18           22. Throughout the morning of April 26, 2020, Office Depot, including  
19 through its CEO Gerry Smith and other top executives, continued to pepper  
20 Plaintiffs with requests to facilitate the supply of PPE from BYD with constant  
21 reassurance that legal agreements memorializing the agreed-upon material terms  
22 were in the works and would be sent over shortly. Defendant top executive Meehan  
23 advised the Plaintiffs, "[o]n legal agreements, we are drafting and will be sending  
24 over a consulting agreement that should meet ur [sic] needs with language around  
25 engagement with BYD etc."

26           23. Meehan sent Plaintiffs a commission schedule that Office Depot  
27 drafted with an 8% commission rate for the delivered units of PPE, based on the cost  
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1 of each product. (*See* Ex. A, compensation.) This was the commission rate that the  
2 parties had always discussed throughout their talks.

3       24. The parties agreed to the commission schedule and non-circumvent  
4 language, which they agreed to reiterate in a Consultant Services Agreement.

5       25. Facing an April 28, 2020, deadline to place a supply order, Office  
6 Depot continued to request information from Plaintiffs regarding BYD products  
7 based on their agreements.

8       26. On or about April 27, 2020, Plaintiffs and Office Depot confirmed and  
9 agreed upon the terms to include in the Consultant Services Agreement, which was  
10 then memorialized in the agreement provided to Plaintiffs later that day.

11       27. On April 28, 2020, John Tinsman (in-house counsel at Office Depot)  
12 sent to Plaintiffs a revised draft of the Consultant Services Agreement, which did  
13 not modify the parties' agreed upon material terms, including the compensation  
14 schedule, and only had non-material changes.

15       28. Office Depot repeatedly requested that Plaintiffs immediately work to  
16 source PPE. Plaintiffs kept CEO Gerry Smith apprised of the work they were  
17 conducting on Office Depot's behalf and the opportunities that they were facilitating  
18 for it. CEO Smith had extensive communications with Plaintiffs' team and was  
19 intimately involved in the contract inducement and formation.

20       29. In hindsight, although the parties had agreed to all the materials terms  
21 governing Plaintiffs' work for Office Depot, it appears that Office Depot was  
22 downplaying the actual execution of a written consulting agreement with Plaintiffs  
23 in an effort to get the benefit of Plaintiffs' performance – the introduction and  
24 coordination with a supplier of critically important PPE, along with the facilitation  
25 of the supply of that PPE – while simultaneously attempting to cut Plaintiffs out  
26 once Office Depot had reaped that benefit.

1           30. On April 29, 2020, understanding Plaintiffs had already verbally agreed  
2 with Office Depot on all material terms of the Consultant Services Agreement, and  
3 in an attempt to start placing orders before a Chinese Labour Day holiday that would  
4 shut down factories in China from May 1 to May 5, 2020, Nevado introduced Office  
5 Depot CEO Gerry Smith to Oscar Su (“Su”), Head of Global HealthCare Solutions  
6 at BYD.

7           31. After connecting BYD to Office Depot, Office Depot and Plaintiffs  
8 again agreed that Plaintiff would continue to serve as consultants to Office Depot to  
9 provide facilitation, logistical support, and in sourcing the PPE from BYD.

10           32. That same day, Office Depot sent BYD a Letter of Intent that  
11 confirmed Office Depot’s intent to buy 200 million 3 ply face masks and 15 million  
12 N95 respirators to be delivered in May 2020 from BYD, and to buy 500 million 3  
13 ply face masks and 100 million N95 respirators to be delivered in June.

14           33. Following Plaintiffs’ April 29, 2020 introduction and on the same day  
15 Office Depot signed the Letter of Intent, John Gannfors of Office Depot  
16 communicated directly to Su, Head of BYD America, via WeChat to try to  
17 circumvent Plaintiffs and establish a direct link between BYD and Office Depot to  
18 source the PPE.

19           34. Office Depot realized that they had already received significant benefits  
20 of performance from Plaintiffs by virtue of the introduction to Su and BYD, and  
21 Plaintiffs’ weeks of tireless work in sourcing and facilitating the delivery of the  
22 PPE. Seeking to avoid compensating Plaintiffs, Office Depot reached out to Su in an  
23 attempt to circumvent the parties’ agreement. Office Depot’s direct contact with  
24 BYD violated the parties’ agreement and was an improper and clumsy attempt to cut  
25 Plaintiffs out of their duly negotiated deal.

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1           35. To make matters worse, Office Depot did so with full knowledge that  
2 Plaintiffs had already spent significant time and energy in sourcing, securing, and  
3 facilitating the PPE, including having made the introduction to BYD. Throughout,  
4 Plaintiffs continued to act as liaison and facilitator between Office Depot and BYD  
5 throughout their negotiations as had been agreed upon and at the behest of Office  
6 Depot.

7           36. Therefore, on information and belief, every communication from  
8 Office Depot to Plaintiffs once Office Depot began their “circumvention campaign”  
9 was an intentional misrepresentation of their plans and intentions to deal with  
10 Plaintiffs in good faith and compensate them for their performance.

11           37. In a ruse to further exclude Plaintiffs from the deal, and despite that the  
12 parties had already agreed to all the material terms of their agreement, Office Depot  
13 began insisting on irrelevant and non-material contractual language in the TVA and  
14 Consultant Services Agreement that it had not previously mentioned during its  
15 numerous discussions with Plaintiffs.

16           38. From the April 23, 2020 telephone call with Office Depot until June  
17 2020, Plaintiffs worked tirelessly and incessantly with BYD’s representatives in  
18 China and the United States to introduce and interface the purchasing department of  
19 Office Depot with BYD and their logistics provider.

20           39. At the same time, Plaintiffs worked simultaneously with multiple teams  
21 from both Office Depot and BYD to make sure the PPE met US standards, which  
22 included complicated negotiations with the third-party certification and testing  
23 company, SGS.

24           40. Plaintiffs worked to ensure that the PPE products at SGS’s testing  
25 facilities in China and the USA were labeled and tested correctly and under the right  
26 standards.

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41. Plaintiffs' work to source and deliver the massive quantities of products that Office Depot desired to purchase from BYD were made pursuant to the parties' agreement that Plaintiffs would be compensated based on the agreed-upon commissions schedule, which is contained in the Consultant Services Agreement. As made clear by its actions as well as written and verbal communications, Office Depot had agreed to the material terms of the parties' agreement.

42. Based on the units of PPE that BYD has supplied to Office Depot starting in May 2020 and to the present, including millions of face masks, respirators, test kits, gloves, and sanitizer, Plaintiffs are entitled to compensation for their services of more than \$15,000,000 based on the delivered cost of PPE.

**OFFICE DEPOT'S BREACH AND FAILURE TO PAY THE  
COMPENSATION OWED TO PLAINTIFFS**

43. On or about May 9, 2020, after Plaintiffs questioned Office Depot regarding its failure to compensate Plaintiffs for their services in sourcing and facilitating the delivery and sale of PPE based on the terms of their agreement, Meehan responded: "We are working on a solution." However, it started to become clear that Office Depot had no intention of honoring their agreement with Plaintiffs.

44. On May 11, 2020, Meehan responded that Office Depot was not looking "for further assistance" from Plaintiffs because Office Depot was now in communication with BYD to purchase PPE.

45. To be clear, Office Depot would never have had an introduction to BYD, nor would they have been even close to being in a position to purchase PPE, if not for the direct efforts of Plaintiffs.

46. Due to Plaintiffs' efforts, upon information and belief, Office Depot ordered in May 2020 (200 million 3 ply face masks and 15 million N95 respirators) and in June 2020 (500 million 3 ply face masks and 100 million N95 respirators), and importantly BYD continues to supply Office Depot with PPE today as a result

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1 of Plaintiffs' extensive efforts.

2 47. In or around late May 2020 and June 2020, Plaintiffs again requested  
3 that Office Depot honor their agreement to compensate Plaintiffs for their work and  
4 services in sourcing and facilitating the sale of PPE pursuant to the parties'  
5 agreements; specifically, the compensation schedule contained in the Consultant  
6 Services Agreement that was negotiated and agreed upon with Office Depot.

7 48. On June 15, 2020, Office Depot sent Plaintiffs a proposal to pay them  
8 approximately \$147,000 (total) for their efforts in direct violation of the terms of the  
9 agreement between Plaintiffs and Office Depot.

10 49. This was a far cry from Office Depot's agreement to compensate  
11 Plaintiffs between 6-10% of the Delivered Cost of each unit of PPE, which Plaintiffs  
12 estimate could reach (or exceed) \$15,000,000, which was expressly acknowledged  
13 and agreed to by Office Depot.

14 50. As a result of Office Depot's breach of contract, Plaintiffs are owed  
15 approximately \$15,000,000, which represents the fees Plaintiffs are entitled to for  
16 facilitating, logistical support, and sourcing PPE for Office Depot to protect against  
17 the spread of COVID-19. In addition, Plaintiffs seek other damages caused by  
18 Defendant's fraudulent and tortious actions and detailed below, along with their  
19 reasonable attorneys' fees, costs, and interest.

20 **FIRST CLAIM: BREACH OF CONTRACT**

21 51. Plaintiffs hereby incorporate by reference all the preceding paragraphs  
22 as if fully set forth herein.

23 52. As alleged above, Plaintiffs and Defendant entered a binding contract  
24 wherein Plaintiffs were to perform sourcing or consulting services to Office Depot  
25 for PPE.

26 53. Plaintiffs did all, or substantially all, of the significant things that the  
27 contract required them to do. Specifically, as stated in the paragraphs above,  
28

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1 Plaintiffs located the product supplier (BYD/Global Healthcare Product Solutions,  
2 LLC), negotiated the product pricing, quantities available, shipping  
3 methods, delivery dates and locations, and product inspection and testing.

4 54. Indeed, as Plaintiffs had promised Office Depot in an initial email  
5 communication, Plaintiffs remained in the process and helped guide Office Depot  
6 throughout.

7 55. Office Depot accepted Plaintiffs' performance but have failed to pay  
8 Plaintiffs for that performance as the contract required it to do.

9 56. To the extent Plaintiff has not substantially complied with the terms,  
10 provisions, and conditions precedent of the contract, Defendants waived and/or is  
11 estopped from asserting such a defense because its actions and course of conduct  
12 have been inconsistent with an intention to enforce requirements under the contract.

13 57. By virtue of Defendant's failure to compensate Plaintiffs for their  
14 performance, Plaintiffs have been damaged by an amount to be proved at trial.

### 15 **SECOND CLAIM: SERVICES RENDERED**

16 58. As described in the paragraphs above, Defendant Office Depot, by  
17 words and conduct, requested that Plaintiffs perform services for its benefit.

18 59. As described in the paragraphs above, Plaintiffs performed the services  
19 as requested.

20 60. Office Depot has not paid Plaintiffs for the services, which were  
21 provided.

22 61. Plaintiffs will prove the reasonable value of these services, which are  
23 well above the jurisdictional minimum of this court, at trial.

### 24 **THIRD CLAIM: INTENTIONAL MISREPRESENTATION**

25 62. Plaintiffs hereby incorporate by reference all the preceding paragraphs  
26 as if fully set forth herein.

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1           63. Defendant made numerous representations to Plaintiffs to induce  
2 Plaintiffs to enter the contract with Defendant, particularly regarding their intent to  
3 compensate Plaintiffs for the services they were providing, as alleged in paragraphs  
4 1-16, 8-19, 22-33.

5           64. These representations were material facts, meant to keep Plaintiffs  
6 performing for Defendant's benefit and they were demonstrably false. Plaintiffs are  
7 informed and believe that Defendant concealed the facts that it was intending to cut  
8 Plaintiffs out of its deal with BYD, surreptitiously contacting BYD in attempts to  
9 circumvent the agreement it had with Plaintiffs and would not pay Plaintiffs for the  
10 services performed at Defendant's behest.

11           65. Defendant knew that its representations were false when made or were  
12 made recklessly and without regard for their truth.

13           66. Defendant intended for Plaintiffs to rely on the representations. Indeed,  
14 they were intended to persuade Plaintiffs to continue performing pursuant to the  
15 parties' agreement.

16           67. Plaintiffs reasonably relied on Defendant's misrepresentations.  
17 Plaintiffs reasonably believed Defendant's statements and conduct at the time to be  
18 truthful, and such reliance was a substantial factor in causing Plaintiffs' harm.

19           68. As a result of Defendant's fraudulent conduct and statements as  
20 alleged, Plaintiff was harmed and suffered, separate and distinct economic losses to  
21 be proved at trial.

22           69. Plaintiffs, on information and belief, and on that basis alleges, that in  
23 taking such actions, Defendant was guilty of oppression, fraud and/or malice, as  
24 defined in California Civil Code section 3294. Defendant's conduct was despicable  
25 and intended to cause injury to Plaintiffs and deprive Plaintiffs of its rights and was  
26 carried on by Defendant with a willful and conscious disregard of Plaintiffs' rights  
27 and the consequences of its actions on Plaintiffs.  
28

**FOURTH CLAIM: UNJUST ENRICHMENT**

70. Plaintiffs hereby incorporate by reference all the preceding paragraphs as if fully set forth herein.

71. By engaging in the conduct alleged above, Office Depot received unjust benefits, namely the benefit of the value of Plaintiffs' sourcing of PPE. Office Depot has unjustly retained this value at Plaintiffs' expense and has provided no compensation to Plaintiffs.

72. Office Depot's unjust retention of benefits at Plaintiffs' expense caused Plaintiff's harm, for which Defendants must provide restitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully demands judgment in its favor and against Defendant as follows:


1. For general damages in a sum in excess of the minimum jurisdictional amount according to proof;
2. For punitive damages;
3. For prejudgment interest;
4. For costs of suit incurred and attorneys' fees, as applicable;
5. For appropriate injunctive relief;
6. For restitution; and
7. For such other and further relief deemed just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests that this action be tried before a jury.

Dated: April 4, 2022

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